

Wage and Hour Division, Labor

§ 502.8

services of an H-2A worker does not cooperate with an investigation concerning the employment of H-2A workers or U.S. workers hired in corresponding employment, the WHD shall report such occurrence to ETA and may recommend that ETA revoke the existing certification that is the basis for the employment of the H-2A workers giving rise to the investigation, and the WHD may recommend to ETA the debarment of the employer from future certification for up to 3 years. In addition, the WHD may take such action as may be appropriate, including the seeking of an injunction and/or assessing civil money penalties, against any person who has failed to permit the WHD to make an investigation.

(c) *Confidential investigation.* The Secretary shall conduct investigations in a manner that protects the confidentiality of any complainant or other person who provides information to the Secretary in good faith.

(d) *Report of violations.* Any person may report a violation of the work contract obligations of sec. 218 of the INA or these regulations to the Secretary by advising any local office of the SWA, ETA, WHD, or any other authorized representative of the Secretary. The office or person receiving such a report shall refer it to the appropriate office of DOL, WHD for the geographic area in which the reported violation is alleged to have occurred.

§ 502.6 Cooperation with DOL officials.

All persons must cooperate with any official of the DOL assigned to perform an investigation, inspection, or law enforcement function pursuant to the INA and these regulations during the performance of such duties. The WHD will take such action as it deems appropriate, including seeking an injunction to bar any failure to cooperate with an investigation and/or assessing a civil money penalty therefore. In addition, the WHD will report the matter to ETA, and the WHD may recommend to ETA the debarment of the employer from future certification and/or recommend that the person's existing labor certification be revoked. In addition, Federal statutes prohibiting persons from interfering with a Federal officer in the course of official duties are

found at 18 U.S.C. 111 and 18 U.S.C. 1114.

§ 502.7 Accuracy of information, statements, data.

Information, statements and data submitted in compliance with provisions of the Act or these regulations are subject to 18 U.S.C. 1001, which provides, with regard to statements or entries generally, that whoever, in any matter within the jurisdiction of any department or agency of the U.S. knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both.

§ 502.8 Surety bond.

(a) H-2ALCs shall obtain a surety bond to assure compliance with the provisions of this part and 20 CFR part 655, subpart B for each labor certification being sought. The H-2ALC shall attest on the application for labor certification that such a bond meeting all the requirements of this section has been obtained and shall provide on the labor certification application form information that fully identifies the surety, including the name, address and phone number of the surety, and which identifies the bond by number or other identifying designation.

(b) The bond shall be payable to the Administrator, Wage and Hour Division, United States Department of Labor. It shall obligate the surety to pay any sums to the Administrator, WHD, for wages and benefits owed to H-2A and U.S. workers, based on a final decision finding a violation or violations of this part or 20 CFR part 655, subpart B relating to the labor certification the bond is intended to cover. The aggregate liability of the surety shall not exceed the face amount of the bond. The bond shall be written to cover liability incurred during the term of the period listed in the application for labor certification made by the H-2ALC, and shall be amended to cover

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any extensions of the labor certification requested by the H-2ALC. Surety bonds may not be canceled or terminated unless 30 days' notice is provided by the surety to the Administrator, WHD.

(c) The bond shall be in the amount of \$5,000 for a labor certification for which a H-2ALC will employ fewer than 25 employees, \$10,000 for a labor certification for which a H-2ALC will employ 25 to 49 employees, and \$20,000 for a labor certification for which a H-2ALC will employ 50 or more employees. The amount of the bond may be increased by the Administrator, WHD after notice and an opportunity for hearing when it is shown based on objective criteria that the amount of the bond is insufficient to meet potential liabilities.

§ 502.10 Definitions.

(a) Definitions of terms used in this part. For the purpose of this part:

Administrative Law Judge (ALJ) means a person within the Department's Office of Administrative Law Judges appointed pursuant to 5 U.S.C. 3105, or a panel of such persons designated by the Chief Administrative Law Judge from the Board of Alien Labor Certification Appeals (BALCA) established by part 656 of this chapter, which will hear and decide appeals as set forth at 20 CFR 655.115.

Administrator, WHD means the Administrator of the Wage and Hour Division (WHD), ESA and such authorized representatives as may be designated to perform any of the functions of the Administrator, WHD under this part.

Adverse effect wage rate (AEWR) means the minimum wage rate that the Administrator of the Office of Foreign Labor Certification (OFLC) has determined must be offered and paid to every H-2A worker employed under the DOL-approved *Application for Temporary Employment Certification* in a particular occupation and/or area, as well as to U.S. workers hired by employers into corresponding employment during the H-2A recruitment period, to ensure that the wages of similarly employed U.S. workers will not be adversely affected.

Agent means a legal entity or person, such as an association of agricultural

employers, or an attorney for an association, that—

(1) Is authorized to act on behalf of the employer for temporary agricultural labor certification purposes;

(2) Is not itself an employer, or a joint employer, as defined in this section, with respect to a specific application; and

(3) Is not under suspension, debarment, expulsion, or disbarment from practice before any court or the Department, the Board of Immigration Appeals, the immigration judges, or DHS under 8 CFR 292.3, 1003.101.

Agricultural association means any nonprofit or cooperative association of farmers, growers, or ranchers (including but not limited to processing establishments, canneries, gins, packing sheds, nurseries, or other fixed-site agricultural employers), incorporated or qualified under applicable State law, that recruits, solicits, hires, employs, furnishes, houses or transports any worker that is subject to sec. 218 of the INA. An agricultural association may act as the agent of an employer for purposes of filing an H-2A *Application for Temporary Employment Certification*, and may also act as the sole or joint employer of H-2A workers.

Application for Temporary Employment Certification means the Office of Management and Budget (OMB)-approved form submitted by an employer to secure a temporary agricultural labor certification determination from DOL. A complete submission of the *Application for Temporary Employment Certification* includes the form and the initial recruitment report.

Area of intended employment means the geographic area within normal commuting distance of the place (worksite address) of the job opportunity for which the certification is sought. There is no rigid measure of distance which constitutes a normal commuting area, because there may be widely varying factual circumstances among different areas (e.g., average commuting times, barriers to reaching the worksite, quality of the regional transportation network, etc.). If the place of intended employment is within a Metropolitan Statistical Area (MSA), including a multistate MSA, any place within the MSA is deemed to be within